

Town of Oshkosh

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To: <Undisclosed-Recipient:;>
Sent: Wednesday, August 08, 2007 8:43 AM
Subject: NR115 Proposals summary

Copied from Sawyer County Record. 8/2/07

Proposed statewide shoreland development revisions could affect minimum property size

Ability to make improvements to dwellings, mitigation, and restrictions on impervious surfaces also affected

Sawyer County Record

Last updated: Wednesday, August 01st, 2007 10:55:54 AM

RICE LAKE -- by Frank Zufall, Spooner Advocate

Officials from the Wisconsin Department of Natural Resources (DNR) stood before a crowd that easily numbered 200 on Thursday, July 26, at the Blue Hills Masonic Center and spent a good part of an hour explaining proposed changes to the state's minimum shoreland development standards called Natural Resources Chapter 115 or NR 115.

Major proposed revisions would affect minimum property size, ability to make property improvements to dwellings, mitigation, and restrictions on hard or impervious surfaces such as roofs and asphalt or concrete driveways.

After a review of the proposed changes, several people asked questions about the revisions, and then tape-recorded testimony was taken from those who wanted to add their input to the record.

Anyone living around a lake or stream is probably familiar with or has heard a neighbor or government official talk about NR115, the basic guidelines for shoreland development in unincorporated areas.

If a shoreland owner has not heard of NR115, he or she likely has heard about county zoning ordinances governing shoreland development, which at the minimum implements NR115 at the county level in unincorporated areas. Villages and cities do not have to comply with NR115.

In fact, several counties in Wisconsin, like Washburn County, have more restrictive standards than NR115. Some, for example, require a larger minimum lot size along lakes.

NR115 has been in place since 1968.

According to the DNR, since 1966 the number of dwellings on northern Wisconsin lakes has increased an average of 216 percent and as much as 900 percent on lakes 400 to 900 acres.

A 1997 study concluded the 1968 standards, which addressed lot size, building setbacks, and restrictions on vegetation removal, were not sufficient to respond to growing development and corresponding increase in nutrient runoff.

In response, listening sessions over revising NR115 were held statewide in 2003 and 2005. In 2005, as in 2007, those attending listening sessions were offered a proposed draft for changing NR115.

The DNR said after 19 listening sessions and more than 50,000 written comments and five years of work by citizen advisory committees, the 2007 draft was developed.

Toni Herkert, policy analyst leading the revision, said the 2007 version simplified the 2005 draft.

Herkert reviewed the proposed revisions for the 2007 draft for the crowd in Rice Lake by comparing current law and 2005 and 2007 drafts.

Concerning lot size, 20,000 square feet would be the minimum with 100 feet of width at the building setback, and each county would set its own standard for interpreting how to implement the standard for multi-family residences, campgrounds, and mobile home parks.

Currently, NR115 allows 10,000 square feet for lots with homes attached to sanitary sewers but 20,000 square feet for those with septic systems.

However, the proposed change also allows using substandard lots, less than 20,000 square feet, and even reducing the setback for buildings from the ordinary high-water mark from 75 feet to 50 feet, if other criteria are met, such as mitigation for controlling runoff.

Another change would remove the improvement and remodeling cap of 50 percent of equalized value on nonconforming structures. However, that change comes with two phrases often repeated in the 2007 draft — impervious surface and mitigation.

As in the 1968 version, any change to a non-conforming structure will require at a minimum the restoration of the shoreland buffer — vegetation near the shoreland — at least 35 feet inland.

The 2007 version also restricts the amount of impervious or hard surfaces allowed to either 15 or 20 percent of the land within 300 feet of the ordinary high-water mark.

New or existing dwellings being renovated are allowed to exceed the minimum impervious surface area but only if a mitigation plan is imposed that ensures the post-development runoff is equal to the predevelopment runoff.

Herkert said each county could decide what mitigation practices, such as rain gardens, could be applied.

Herkert said performance standards for mitigation must include protecting, preserving, and enhancing wildlife habitat, natural scenic beauty, shoreland vegetation, and other natural features.

Herkert said mitigation plans could be developed as either a simple or detailed plan. A simple plan would take in consideration just square footage of impervious surfaces against lot size, but a detailed plan would look at soil characteristics, slope, and other factors to pinpoint scientifically the mitigation needed. She said the detailed mitigation might require the services of a consultant or county zoning specialist.

Herkert said developers might think the answer to the restrictions is to build taller for more square footage, but in anticipation of that impulse, the 2007 draft also imposes 35-foot dwelling height restrictions.



Process

Herkert said the listening sessions would conclude in August and Sept. 7 would be the deadline for all written comments.

The DNR may make further revisions, and then in early 2008, the draft will be taken to the Natural Resources Board, the agency that sets policy for the DNR. The Natural Resources Board (NRB) would then take the draft to the Legislature. (In attendance at the Rice Lake meeting were NRB members David Clausen and John "Duke" Welter.)

Herkert said if the Legislature does not act on the draft after 30 days, it is promulgated into the Administrative Code. Herkert projected that at the earliest, a new version of NR115 might be in place by 2010.

If the revisions become part of the code, Herkert said, counties then would be responsible for reviewing their zoning ordinances and implementing changes to comply.

Public Comments

After questions about the proposed revisions, the public was offered an opportunity to officially voice their input on the revisions.

A sample of comments include the following:

Fred Blake of Sarona, president of Washburn County Lake and Rivers Association, speaking for himself, said he was concerned with the impact of the 20 percent impervious allotment for larger lots, such as those from one to three acres. He suggested including a formula for reducing the amount of impervious surface allowed as lot sizes increase.

Robert Moe of Haugen said the revisions do not go far enough in that they only apply to non-incorporated areas. He said the state should look at cities because pollution is occurring there and affecting the larger environment.

Elizabeth Bettlehaugen of Weyerhuaser said the 1960 regulation did not help in the 21st century. "A little preservation can prevent a lot of restoration," she said. She endorsed the mitigation requirements.

A representative of the Big Chetek Lake Association of Birchwood said its members endorse the revision. Mary Joe Plummer of Chippewa Falls and a resident of Lake Wayzata also endorsed it.

John Stencil of Rusk County said his county has very restrictive lakeshore zoning and it impedes development. He, too, said it is unfair for unincorporated areas to be under NR115 while cities, where salt and grease end up on the road and eventually in rivers, are not required to follow the standards. Stencil said the simple solution to runoff is to create a physical barrier before the lake so water goes down and not out, or build cisterns to capture water and slowly release it.

Dan Graff, a biology teacher at Rice Lake High School, said leaders need to look ahead at reducing the impact from development and a growing population. He endorsed the revisions and requiring municipalities to comply with NR 115.

Written input

Information on the proposed revision is available at

<http://www.dnr.wi.gov/org/water/wm/dsfm/shore/news.htm> The deadline for written comments is Sept. 7. Comments can be e-mailed to <http://adminrules.wisconsin.gov> or mailed to Toni Herkert, Wisconsin DNR, Bureau of Watershed Management, Box 7921, Madison, WI 53707.